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HIGH COURT OF DELHI AT NEW DELHI

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RSA 367/2014 & CM APPL.3367/2015

Pronounced on: 5th January, 2016

M/S ARIES PLASCHEM INDIA PVT LTD (THR ITS
DIRECTOR SUBHASH GUPTA) Appellant

Through: Mr. Aditya Kumar, Advocate with
Mr. Rupesh Kumar, Advocate

versus

M/S DIC INDIA LTD Respondent

Through: Mr. Ankit Kapoor, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is an appeal filed by the appellant against the order dated 6th August, 2014 passed by the learned Additional District Judge, Cental-03, Tis Hazari Court, Delhi in RCA No.20/2013 titled *M/s. DIC India Ltd. v. Aries Plaschem Industries Pvt. Ltd.* by virtue of which the judgment and decree dated 01.05.2013 passed by the learned Civil Judge, Central Delhi was set aside and the case was remanded back to the learned trial Court for disposal in accordance with law.

2. I have heard the learned counsel for the parties. I have also gone through the record.
3. The only substantial question of law which arises in the instant matter is whether the finding which has been returned by the learned First Appellate Court setting aside the judgment and decree with regard to the fixation of mesne profits @ Rs.16/- per sq. ft./per month is erroneous/perverse or not.
4. Briefly stated the facts of the case are that the present appellant is the landlord of the suit premises consisting of basement and the ground floor of the property bearing No.25, Community Centre, Maya Puri, Phase-I, Delhi which was let out to the respondent/tenant at a monthly rent of Rs.4250/- by a registered Lease Deed dated 21.07.1982. The appellant/landlord vide notice dated 08.08.1996 terminated the tenancy of the respondent and requested for handing over the physical and vacant possession of the suit premises and since this was not done, the appellant filed a suit for possession along with recovery of mesne profits @ Rs.1,000/- per day.

5. So far as the possession is concerned, the learned ADJ passed the decree of possession on the basis of admission under Order 12 Rule 6 CPC and the appellant/landlord was handed over the possession of the suit premises on 30.09.2002, subject to the inquiry under Order 20 Rule 12 CPC to be decided as to what is the quantum of mesne profits payable to the appellant/landlord and at what rate. The period for which this mesne profits were payable by the respondent/tenant was w.e.f. 01.09.1996 to 30.09.2002, i.e. date of handing over the possession. The learned trial Court after recording the evidence of PW-1 and PW-2 on behalf of the appellant/landlord and DW-1 and DW-2 on behalf of the respondent/tenant, analyzed the evidence and arrived at the finding that the appellant/landlord was entitled to mesne profits @ Rs.16/- per sq. ft./per month for the aforesaid period.
6. The respondent/tenant challenged before the Court of learned ADJ the said finding of the payment of mesne profits @ Rs.16/- per sq. ft. /per month for the period of six years from 01.09.1996 to 30.09.2002 when the premises were vacated.

7. The learned ADJ after going through the evidence set aside the judgment and the decree fixing payment of mesne profits @ Rs.16/- and remanded the matter back to the trial Court to decide the matter afresh. The Appellate Court also observed that the parties may lead evidence to resolve the inquiry made under Order 20 Rule 12 CPC on the quantification of mesne profits/damages, subject to such conditions as the trial Court may in its discretion like to impose.
8. The learned counsel for the appellant/landlord has filed the present second appeal before this Court assailing the judgment and decree dated 06.08.2014 setting aside the rate of mesne profits fixed by the learned Civil Judge and remanding the matter back to the trial Court on the ground that there was sufficient evidence produced by the parties already in the case and, therefore, by setting aside the said judgment and the decree, the learned ADJ has only prolonged the final disposal of the matter. It has also been contended that the in *P. Purushottam Reddy & Anr. v. Pratap Steels Ltd., (2002) 2 SCC 686*, the Apex Court has deprecated the practice of use of inherent powers by the High Court after 1976 amendment in the

CPC for wholesale remand of the case under Order 41 Rule 23 or 23-A because these orders of remand result in keeping the litigation pending unnecessarily which could be avoided.

9. In the instant case also the learned counsel for the appellant has contended that the premises have been vacated in the year 2002 and more than 13 years have gone by, still the matter pertaining to payment of mesne profits for the period from 1996 to 2002 is hanging fire and, therefore, if at all the first Appellate Court was of the view that the amount of mesne profits which was fixed by the learned Civil Judge was not in consonance with the evidence produced by the parties, the Appellate Court could have decided the issue of mesne profit itself. He has drawn the attention of the Court to Order 20 Rule 12 CPC in this regard. Alternatively, it is contended that the first Appellate Court could have taken the evidence at its own level and decided the same on merits.
10. The learned counsel for the respondent has not been able to dispute the contention of the learned counsel for the appellant.
11. I have carefully considered the submission and have gone through the record.

12. The learned Civil Judge, Central Delhi with regard to the fixation of mesne profits has analyzed the evidence and observed as under:-

“19. The question remains as to what rate, the plaintiff is entitled to claim damages for use and occupation of the premises in suit for the aforesaid period from the defendant. Both the parties have not brought any evidence on record as to what was the prevailing rate of rent in the vicinity in September 1996, 1997 or 1998. The PW-1 Sh. Subhash Gupta has stated that the prevailing rent in the locality for similar accommodation in adjoining buildings is Rs.30 to 40/- per sq. foot per month but he failed to bring any cogent evidence on record to prove that the prevailing rent in the locality for similar accommodation in adjoining building is Rs.30 to Rs.40/- per sq. foot per month. The plaintiff has examined PW-2 Ranbeer Singh, Sr. Manager, Dena Bank, who has proved Ex. PW2/1 unregistered lease deed and statement of account Ex.PW2/2 showing the rent paid by the bank to the landlord. I have perused the Ex.PW2/1, which speaks that the premises was let out to the bank 01-01-1999 @ Rs.24.50 per sq. foot per month and the bank has paid Rs.60,000/- from 01-01-1999 to 01-03-2002 and thereafter the rent was enhanced from Rs.60,000/- to Rs.72,000/- per month. If the rate of rent paid by bank to the landlord is considered than at the most the prevailing rate of rent in locality in September 1996 shall be in between Rs.15 to Rs.20/- per sq. foot. The area with the bank was 2495 sq. foot, so the rate of rent paid by the bank cannot be equated with the premises under the possession of defendant. The premises under the possession of the defendant was at the back side of the bank and in front of slum as per deposition of the defendant. Both the parties have failed to bring any cogent and convincing evidence on record to show as to the prevailing rate of rent in the locality in the

year 1996. As per Ex.PW2/1 and Ex.PW2/2, the premises were let out to the bank on 01-01-1999 and if the rate of rent paid by the Bank is taken as correct than in that eventuality also the damages cannot be awarded to the plaintiff at the same rate on which the bank has been paying the rent. In the absence of any cogent and convincing evidence, I hold that the plaintiff is entitled to recover damages @ Rs.16/- per sq. foot per month for the period w.e.f. 01-09-1996 to 30-09-2002.”

13. A perusal of the aforesaid para would clearly show that the learned Civil Judge has observed that the parties have failed to bring before the learned Civil Judge any convincing evidence on record with regard to the prevailing rate of rent in the locality in the year 1996. I do not agree with this view of the learned Judge because it is not in consonance with the evidence produced by the parties. The appellant has produced evidence that a bank in the vicinity was let out premises at Rs.24.50/- These documents are Ex.PW2/1 and Ex.PW2/2 according to which the premises were let out to the Bank on 01.01.1999. Basing its view on the said rate the Court held that the rate of rent was in the proximate vicinity between Rs.15 to Rs.20/- per sq. ft. as observed by the learned Civil Judge. The learned trial Court in the light of the aforesaid observed that the appellant was entitled accordingly to recover damages/mesne

profits @ Rs16/- per sq. ft./per month for the aforesaid period. The learned Civil Judge has rightly reduced the rent to a figure which was almost 8½ rupees less than Rs.24.50/- and almost 1/3rd of the rate at which the Bank was paying the rent.

14. No evidence was produced by the respondent/tenant to counter this argument or evidence. Therefore, in the absence of the same, it could not be held that the observations passed by the learned Civil Judge fixing up the mesne profits @ Rs.16/- per sq. ft./ per month was purely based on conjecture and surmise. There is inherent guess work to be involved in every case of fixation of mesne profits and there can rarely be a foolproof case where the exact amount of mesne profits can be determined by the Court.
15. The determination of mesne profits involves adjudication of a pure question of fact and there exists hardly any standard pattern of assessment in this regard. The Court has to undertake a comparative assessment of the nature, location, age, condition etc. of the suit schedule premises, on the one hand, and the similar characteristics of the premises in the surrounding area, on the other, as it is very difficult to find the premises of similar nature, size and

quality at the same location. Even if there exists any broad similarity on these aspects, the rent in respect of such premises would depend, mostly, upon the need of the lessee and the circumstances under which the leases are granted. Prevalence of amity or enmity, as the case may be, between the landlords and the tenants or the duration of lease, are also certain factors, which would have a bearing on this. (*J. Bhakthavasala Rao v. Industrial Engineers, Nellore, AIR 2005 A.P. 438*. Documents which indicate rent which suit premises would likely to fetch are also relevant and would be considered. [*J. Bhakthavasala Rao v. Industrial Engineers, Nellore, AIR 2005 A.P. 438*].

16. Normally a person in wrongful possession has to pay compensation on the basis of profits he actually received or with ordinary diligence might have received. The assessment of compensation, not on the value of the user but on an estimated return on the value of the property is unsustainable [*Fatehchand v. Balkishan, AIR 1963 SC 1405*]. Correct rate of mesne profits against a person whose tenancy had terminated is market rental value of the property.

17. Therefore, I feel that the findings returned by the first Appellate Court setting aside the rate of mesne profits payable by the respondent/tenant was only an erroneous finding without any cogent basis. The evidence already existed on record in the form of Ex.PW-2/1, i.e. unregistered Lease Deed showing that the premises were let out to Bank at the rate of Rs.24.50/- in 1999. The mesne profits is to be fixed for the period prior to as well as post 1999. If this rate of Rs.24/- is divided in three parts it comes to Rs.8/- and the trial Judge has rightly fixed mesne profits at Rs.16/- per sq. ft., i.e. twice of Rs.8/-. Order 20 Rule 12 CPC also reads as under:-

“12. Decree for possession and mesne profits.-

(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the court may pass a decree—

(a) for the possession of the property;

(b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent;

(ba) for the mesne profits or directing an inquiry as to such mesne profits;

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until—

- (i) the delivery of possession to the decree holder,*
 - (ii) the relinquishment of possession by the judgment debtor with notice to the decree holder through the court, or*
 - (iii) the expiration of three years from the date of the decree, whichever event first occurs.*
- (2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.”*

18. Further the Court must also take into account the observations passed by the Apex Court in *P. Purushottam Reddy & Anr. v. Pratap Steels Ltd.*, (2002) 2 SCC 686, that the remand of a matter would not serve some solitary purpose rather than keeping the matter alive for such a small issue where the payment of mesne profits is to be determined for a specified period which is today almost 18-19 years old and by doing so, we are keeping unnecessarily the litigation alive when at best the mesne profits could be fixed at a rupee here or there.
19. Therefore, I feel that the learned ADJ ought to have been taken a more pragmatic view and accepted the finding returned by the learned Civil Judge rather than setting aside the judgment and

decree on the quantum of payment of mesne profits and remanding the matter back to the Civil Judge with the direction that fresh evidence be produced for the purpose of holding an inquiry. It is such like orders which are passed without any concern for the heavy pendency in Courts that clog the arteries of justice and approach of the Court ought to be to put to bring the quietus to the litigation between the parties. I feel the judgment and decree of the learned Civil Judge's observations to be upheld after setting aside the judgment and decree dated 06.08.2014 passed by the learned ADJ as being erroneous on the basis of the evidence produced by the parties. I accordingly set aside the judgment and decree dated 06.08.2014 passed by the first Appellate Court and restore the judgment and decree dated 01.05.2013 passed by the learned Civil Judge.

20. Pending application also stands disposed of.

V.K. SHALI, J.

JANUARY 05, 2016

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